IN THE

Supreme Court of the United States

October Term, 1973

No. 73-36

FREEHOLD REGIONAL HIGH SCHOOL EDUCATION ASSOCIATION, a non-profit corporation of the State of New Jersey,

Petitioner,

vs.

STATE OF NEW JERSEY,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION

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No.

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vs.

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BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION

STATEMENT OF THE CASE

The petitioner, Freehold Regional High School Education Association, is a non-profit corporation of the State of New Jersey which serves as the collective bargaining representative of teachers and related personnel in the Freehold Regional school system. New Jersey Laws of 1968, *N.J.S.A.* 34:13A-1 et seq.

The petitioner knowingly violated a New Jersey court order restraining a public employee strike. The association was found quilty of criminal contempt of court in a summary proceeding and ultimately fined. $50,000.00.

In Petitioner's application before this Court, it is urged that the impsoition of a fine exceeding $500 in a summary proceeding is violative of Sixth Amendment of the federal Constitutional guaranteeing a jury trial.

SUMMARY OF ARGUMENT

An artificial entity, not capable of being imprisoned, is not entitled to a jury trial in a criminal contempt prosecution.

ARGUMENT

A CORPORATE ENTITY IS NOT CONSTITUTIONALLY ENTITLED TO A TRIAL BY JURY IN A CONTEMPT PROCEEDING IRRESPECTIVE OF THE MONETARY FINE IMPOSED AS PUNISHMENT.

"The subject here is willful disobedience of an order of the court (by a corporation), and the critical question is whether . . . a monetary limitation, (on a fine) upon trial without a jury would be compatible with the elementary need that the orders of the judiciary be obeyed and be obeyed at once if the underlying wrong which led to the order is to be ended." *In re Fairlawn Education Association*, 63 *N.J.* 112,——A.2d—— (1973); (PIA). In such a case, the summary power rests upon the necessity of the judiciary to compel immediate compliance with court orders. *Id.* at 115-116, ——A.2*D* at——. And the monetary limitation on a corporate fine can be no less than that amount necessary to insure obedience.

Simply then, the issue is whether a right to a jury trial inheres upon the imposition of a substantial fine, and thus transcends the judicial power to insure immediate compliance with a court order. It should be borne in mind that no possibility of imprisonment existed in either case now before the Court, as both contemnors are corporations.

There is no dispute that certain offenses are properly tried summarily, that is without indictment and trial by jury. The initial inquiry then is whether criminal contempt is that class of offense requiring a jury trial irrespective of the penalty authorized or imposed.

The nature of criminal contempt, an offense *sui generis* in nature, is not a criminal action which falls per se within the requirements of Article III or the Sixth Amendment of the federal constitution. *Cheff v. Schnackenberg*, 384 *U.S.* 373, 378-380 (1966). "For purposes of the right to trial by jury, criminal contempt is treated just like all other criminal offenses. The defendant is entitled to a jury trial unless the particular offense can be classified as petty." *Frank v. United States*, 395 *U.S.* 147,148 (1969). Under the doctrine of *Bloom v. Illinois*, 391 *U.S.* 194-198 (1968), contempt of court must be denominated a petty

offense unless the punishment actually imposed makes it a "serious" one.

Both *Bloom* and *Frank* considered sentences involving imprisonment imposed in summary contempt proceedings in determining the seriousness of the offense. In *Bloom* the imposition of two years imprisonment after summary trial for contempt was held to be violative of that defendant's right to a jury trial. In contrast, *Frank* upheld a conviction for summary contempt where the defendant was given a suspended sentence and placed on probation for three years. It is clear that neither *Bloom* nor *Frank* ever considered the maximum dollar fine that could be imposed in a summary proceeding for criminal contempt.

So too, in *Baldwin v. New York*, 399 *U.S.* 66,69 (1970), the Court considered "seriousness" in terms of imprisonment. The Court concluded that "no offense can be deemed 'petty' for purposes of the right to trial by jury where imprisonment for more than six months is authorized." Research has disclosed no Supreme Court case holding that the dollar amount of the fine might give rise to the right to a jury trial. But see *Schick v. United States*, 194, *U.S.* (Dissenting opinion, Harlan, J., at 838-839); *United States v. Barnett*, 376 *U.S.* 631 (1964) (dissenting opinion, Goldberg, J., at 751-760, which intimates that anything other than a trivial "penalty" would give rise to the right to a jury trial); *United States v. Barnett, supra,* (dissenting opinion, JJ. Black and Douglas, at 724 to 729 and cases cited in notes three and four of that opinion).

Recent speculation that some monetary limit might give rise to the right to a jury trial stems from a statement in *Duncan v. Louisiana*, 391 *U.S.* 145 (1968), which did not involve a contempt charge. There it was held that an authorized statutory maximum of two years made the crime a "serious" one requiring trial by jury. This Court said, "In determining whether the length of the authorized prison term *or the seriousness of other punishment* is enough itself to require a jury trial, we are counseled by *District of Columbia v. Clawans, supra,* (300 *U.S.* 617, 57 *S.C.* 660, 81 *L. Ed.* 843), to refer to objective criteria, chiefly the existing laws and practices in the Nation." *Id.* at 161. The italicized words above are argued to import some monetary figure separating the "serious" from the "petty" offense. Yet nothing in *Duncan* suggests that the amount of a fine would be pivotal. Moreover,

Duncan did not involve the question of whether a corporate contemnor must be accorded a jury trial if the fine exceeds a limit applicable to a statutory offense.

It is the respondent's position that the Constitution of the United States does not require a jury trial in a contempt proceeding where the only punitive sanction imposed is a fine, irrespective of the amount.

It appears that at common law there was no monetary limit to a fine which could properly be imposed without the formalities of a criminal prosecution, *i.e.*, indictment and trial by jury. In the "great justice book" Dr. Richard Burn lists the offenses which were properly tried summarily at common law. Burn, *Justice of the Peace*, 3d ed. "In these, there is no intervention of a jury, but the party accused is acquitted or condemned by the sufferage of such person only as the statute has appointed for his judge." 4 *Blackstone's Commentaries*, 281, n.b. In their learned article, Messrs. Frankfurter and Corcoran summarize Burn's list of offenses prosecuted through the magistrates:

> "(A perusal of Burn's works) discloses at least seven with 20 pounds' penalty, three with fifty pounds, one with one hundred pounds, and one with five hundred pounds. *Qui tam* recoveries were also heavy. At least eight offenses were penalized at twenty pounds, one at twenty-five pounds, five at fifty pounds, two at two hundred pounds, and one at five hundred pounds. Bearing in mind changes in money values, we get some measure of the outside limits of punishment which the common law, as a matter of routine procedure, enforced through magistrates, coincident with its regard for the system of jury trial." Frankfurter and Corcoran, "Petty Federal Offenses and Trial by Jury," 29 *Harv. L. Rev.* 917, 932 (1926).

According to Frankfurter and Corcoran, the colonies too retained several areas of summary prosecution although fewer matters were entrusted to justices than were in the contemporary English law. *Id.* at 936. The colonial legislatures, like Parliament, made no sharp distinction between formal criminal prosecutions

and *qui tam* of civil procedures against offenders which were directed to the same end. *Id* at 937, n. 91. Colonial New Jersey likewise recognized the utility of the summary proceedings. *Id* at 950. The article concludes that an historical examination reveals:

> "First, that all the colonies whose records have been examined, acted on the conviction that the much-cherished jury procedure was not imperative for small offenses; secondly, that the practice of summary procedure, pursued in varying measure by the different colonies, persisted unchallenged through the acrimonious controversy with the crown over the denial of the jury in admiralty courts, through the framing of the jury clauses in state constitutions and through the enactment of the jury clauses in state constitutions and through the enactment of the jury clauses in the federal constitution." *Id.* at 937.

Research has disclosed no case or any authority which purports to set a constitutionally prescribed dollar limit, or that has equated a monetary fine to the right to trial by jury under Article III or the Sixth Amendment to the Federal Constitution. The same holds true of the jury provision of the New Jersey Constitution.

On the other hand, there is authority to conclude that the right to a jury trial is dependent upon a defendant's exposure to the possibility of imprisonment:

> "But it is only where personal liberty is involved that the jury guarantees of Article III and Amendment IV come into play. Alexander Hamilton said that the friends of the plan of the Federal Convention who as to this matter constituted the more conservative group, regarded the trial by jury 'as a valuable safeguard to liberty.' Hamilton's further elucidation of the topic in *The Federalist* clearly shows that the jury assurance of Article III was designed, in accordance with the attitude of the time, to secure personal liberty, and that the protection of private property was left to

Congressional statutory regulation.

> The language of the Amendments of 1791 is easily read consistently with Hamilton's conception that the preservation of liberty was exclusively the function of the criminal jury, and that the protection of property was primarily the task of the civil jury. For although Amendment VII preserved jury trial in all suits 'at common law,' which would mean criminal as well as civil proceedings, the right was restricted to cases where the value and controversy exceeded twenty dollars. The monetary limitation evokes the idea of property interests. Moreover, since certain proceedings criminal in form affected property rights by enforcing fines, penalties and forfeitures, extension of the Seventh Amendment's guarantee beyond private civil actions into this area could well have been intended. In harmony with this interpretation, the application of Amendment VI, assuring the safeguard of a jury against arbitrary imposition of the only remaining criminal sanctions of imprisonment or capital punishment, would be limited to cases involving life or liberty, consistently with Hamilton's analysis." Kaye, "Petty Offenses Have No Peers!" 26 *U. Chi.L. Rev.*245 (1958-1959).

Compare, Comment, "Civil and Criminal Contempt in the Federal Courts," 57 *Yale L.J.* 83, 95-99 (1947).

Consistent with the foregoing is this Court's decision in *United States v. United Mine Workers of America*, 330 *U.S.* 258 (1971). In that case, both the Union and John L. Lewis were found guilty of civil and criminal contempt; the Union was fined $3,500,000, while an individual, John L. Lewis was fined $10,000. Neither had been afforded a jury trial.

In considering the defendant's argument that the fines imposed are arbitrary and excessive, the Court concluded that the fine against the Union should be reduced from $3,500,000 to $700,000; the fine imposed upon defendant Lewis was deemed proper. In reaching this conclusion the Court considered defendants' claim that they were entitled to a jury trial under the Norris-La Guardia Act:

". . . defendants . . . urge only their right to a jury trial as provided in Section 11 of the Norris-La Guardia Act. But Section 11 is not operative here, for it applies only to cases 'arising under this act' and we have already held that the restriction upon injunctions imposed by the act do not govern this case. The defendants, we think, were properly tried by the court without a jury." *Id.* at 298.

This Court then explained the considerations that may be weighed by a trial court in assessing the penalty in such a case:

"Sentences for criminal contempt are punitive in their nature and are imposed for the purpose of vindicating the authority of the court. *Gompers v. Bucks Stove and Range Co., supra,* 221 *U.S.* 441, 55 *L.Ed.* 805, 35 *S.Ct.* 492 34 L.R.A. (ns) 874). The interests of orderly government demand that respect and compliance be given to orders issued by courts possessed of jurisdiction of persons and subject matter. One who defies the public authority and willfully refuses his obedience, does so at his peril. In imposing a fine for criminal contempt, the trial judge may properly take into consideration the extent of the willful and deliberate defiance of the court's order, the seriousness of the consequences of the contumacious behavior, the necessity of effectively terminating the defendant's defiance as required by the public interest, and the importance of deterring such acts in the future. Because of the nature of these standards, great reliance must be placed upon the discretion of the trial judge." *Id.* at 302-303.

After discussing the criteria to be used in imposing judicial sanctions in civil contempt, both to coerce the defendant into compliance with the court's order and to compensate the complainant for the losses sustained, the Court added that: "In fixing the amount of a fine to be imposed as a punishment or as a means of securing future compliance, (the courts should) consider the amount of defendants' financial resources and the consequent

seriousness of the burden to that particular defendant." *Id.* at 304.

Of the other opinions in the *Mine Workers* case, none would have reversed the decision for want of a jury trial. In his concurring opinion, Mr. Justice Frankfurter observed that "(f)or obvious reasons, the petitioners do not claim that the constitution of the United States affords them a right to trial by jury." *Id.* at 307, 311, n.2. Justice Black and Douglas would have held that only civil contempt would have been applicable to the facts of the case; instead of imposing a criminal penalty in this case, they would have placed coercive conditional fines on the defendants for "(d)efendants could then avoid payment by purging themselves." *Id.* at 335; see also dissenting opinion of Rutledge, J., p. 364, n.30, p. 367, n.33, pp. 374-376.

In his dissenting opinion in the same case (330 U.S. at 342), Mr. Justice Rutledge would have concluded that the fine imposed on the Union was excessive within the Eighth Amendment's prohibition. "And for determining excessiveness of criminal fines there are analogies from legislative action which in my opinion are controlling." Mr. Justice Rutledge recited the maximum dollar fines permissible for those crimes recognized by Congress ranging in amount from $5,000 to $20,000. *Id.* at 377, n.53. It was his position that "(l)egislative experience and judgment in this field therefore furnish a measure entitled to great and in some instances I think conclusive weight for consideration of the allowable range of punishment, as such, in criminal contempts where the penalty is undefined by statute." *Ibid.*

Cases following the *United Mine Workers* case have been in accord with the majority's views. For example in *International Union, United Mine Workers of America v. United States*, 177 *F.* 2*d* 29, 36 (D.C. Cir. 1949), *cert.* denied 338 *U.S.* 871 (1950), the court upheld fines of twice those approved in the *United Mine Workers* case mentioned above. In the face of a claim that the fines were excessive, the Court held that "by constitutional and decisional standards" the amount of the fines were proper, especially in light of the fact that the offense involved occurred after the handing down of the *United Mine Workers* case and involved the same labor organizations. See also *United States v. Brotherhood of Railroad Trainmen*, 96 *F.Supp.* 428 (D. Ill. 1951) which upheld the $25,000 fine imposed in one sum for both criminal and civil contempt.

And, in *Drivers, Chauffers and Helpers Local No. 639 v. Penello*, 40 *F. 2d.* 632 (D.C. Cir. 1969), the Court observed:

> "(I)n a case such as the one now under consideration, where compliance (with the court order) has been achieved before imposition of the fine, the focus instead should be upon the gravity of the offense. In this regard it has been stated that, 'where, as here, the purpose of the contempt proceedings is to vindicate the authority and dignity of the court, the punishment imposed should bear some reasonable relation to the nature and gravity of the contumacious conduct. *United States v. Conole*, 365 *F. 2d* 306, 308 (3rd Cir. 1966).' " *Id.* at 634.

On this basis, the court reduced a fine of $20,000 to $10,000 being, "of the opinion that the vindication of the District Court's authority through punishment of the Union, and the desired effect of such punishment upon its future conduct, would be as well served by a fine of $10,000 as one of $21,000." *Id.* at 635.

So too, in *Rankin v. Shanker*, 23 *N.Y. 2d* 111, 295 *N.Y.S. 2d* 625, 242 *N.E. 2d* 802 (Ct. Appl. 1968), the New York Court of Appeals upheld a fine of $10,000 per day or 1/52 of the total amount of annual membership dues "whichever is the lesser." See, penalty provisions contained in the *Taylor Law, Jud. Law* §751, subd. 2, par. (a). There the court reasoned that:

> . . . the determination, whether it is serious or petty under the decisions, turns not on the amount of the fine which may be imposed but solely on the length of the prison sentence. (See *ex parte Wilson*, 114 *U.S.* 417, 428 5 *S.Ct.* 935, 29 *L. Ed.* 89; *People v. Bellinger*, 269 N.Y. 265, 271, 199 *N.E.* 213, 216; *Matter of McKinney v. Hamilton*, 282 *N.Y.* 393, 397, 26 *N.E. 2d* 949, 951, 127 *A.L.R.* 1283). Consequently, as the cases reveal, the fine, even though sizeable in amount, furnishes no valid criterion for the defendants' claim that the contempt charged against them constitutes a serious crime. Further, even if the amount of the permissible fine had any relevance, the fine—which in the last analysis must be borne by the Union membership (see *e.g., Martin v. Curran*, 303 *N.Y.* 276, 281, 101 *N.E. 2d* 683, 686) - is actually small, amounting, at most, to be no more

than a member's weekly union dues for each day of the contempt." (295 *N.Y.S.* 2*d* at 632, 242 *N.E.* 2*d* at 807-808).

See, *In re Jersey City Education Association*, 115 *N.J. Super.* 42, 53-58, 278 *A.* 2*d.* 206 (App. Div. 1971), certif. den. 58 *N.J.* 603 (1971), *cert.* denied 404 *U.S.* 948 (1971); see also *McGowan v. State*, ——— *Misc.* ———, *258 So.* 2*d* 801 (1972), *cert.* denied ——— *U.S.* ——, 34 *L.Ed.* 2*d 298 (1972).*

This Court's action subsequent to the Mine Workers case is also relevant. In *Cheff v. Schnackenberg*, 384 *U.S.* 373 (1966), Holland Furnace's petition for certiorari was denied, (381) U.S. 924 (1965)), despite a $100,000 fine after trial without a jury; however, an individual's petition arising from that same action was granted to determine if he had been denied his right to a jury trial. The individual had been sentenced to six months imprisonment. This Court upheld his conviction, and in an exercise of its supervisory function over the lower federal courts stated that "(w)e rule further that sentences exceeding six months for criminal contempt may not be imposed by federal courts absent a jury trial or waiver thereof." *Id.* at 380. *Cheff* obviously did not address itself to the issue of fines. See *Clark v. Boynton*, 362 *F.* 2*d* 992, 999 n.17 (5th Cir. 1966).

At first glance, *United States v. R.L. Polk & Co.*, 438 *F.* 2*d* 377 (6 Cir. 1971), appears to be contrary authority; however, that case involved the issue of whether the penalty provisions of a federal statute (18 U.S.C.A. §1), limiting the maximum fine for a conviction of a petty offense to $500, was applicable to a corporation found guilty of criminal contempt in a summary proceedings. The *Polk* court reversed a $35,000 fine imposed without a jury trial for the violation of an antitrust consent decree on the basis of its belief that 18 U.S.C.A. §1 set the limit for *all* petty offenses whether committed by an individual or corporation. Accordingly, the fine was reduced to $500. See also *County of McLean v. Kickapoo Creek, Inc.*, 51 *Ill.* 2*d.* 353, 28 *N.E.* 2*d* 720 (Sup. Ct. 1972). However, *Polk* does not stand for the proposition that there is a constitutional limitation on the dollar amount of the fine. The decision in that case was based solely on what that court believed to be the limitation on fines imposed by Congress for all petty offenses, irrespective of their origin. Respondent herein does not agree with the reasoning of the *Polk*

court. It is submitted that the legislative branch of government may not impair the power of the judiciary to secure compliance with court orders. Moreover, in New Jersey the Legislature has not seen fit to prescribe maximum penalties for criminal contempt. See *N.J.S.A.* 2A:10-5 and the construction of that statute in *Department of Health v. Roselle*, 34 *N.J.* 331, 345-346, 169 *A.* 2*d* 153 (1961). See also *In re Beahrer, et al*, 50 *N.J.* 501, 236 *A.* 2*d* 592 (1967).

So far as could be determined, there is no constitutional limitation on the dollar amount of fine, with or without a jury trial. The amount of the fine must be judged in light of the Eighth and Fourteenth Amendments of the Federal Constitution.[1] In terms of due process of law, (i) it must be remembered that there is no univeral right to a jury merely because of the risk of a dollar

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[1] Petitioners do not contend that the Seventh Amendment to the federal Constitution gives rise to a right to a jury trial. Research has disclosed no case which would have afforded the right under the Seventh Amendment, which is essentially a preservative type of jury guarantee, to the criminal contempt situation, even though a monetary fine had been imposed. However, historically a jury trial was neither required nor used in criminal contempt cases. See 4 *Blackstone's Commentaries*, 286-287. Whether or not Blackstone mistakenly categorized the common law procedure regarding summary contempt for offenses committed out of the presence of the court (see Goldfarb, *"Civil Rights v Civil Liberties; the Jury Trial Issue,"* 12 *U.C.L.A.L. Rev. 486, 488-489* (1965), the doctrine has remained constitutionally inviolate in our law until the holding in *Bloom v. Illinois, supra.* One commentator has observed that the:

> "Seventh Amendment does apply to civil cases and requires a jury trial in those involving more than twenty dollars, but it speaks only of suits at common law. Since the civil or coercive kind of contempt is usually thought of as equitable in nature and not part of the common law, the Seventh Amendment, even if applicable to the states, would not seem to be controlling. Of course, it would be possible for the Court to hold that the Fourteenth Amendment's due process requirement imposes the jury trial obligation upon states quite apart from the Seventh Amendment's terms." Dobbs, "Contempt of Court: A Survey," 56 *Cornell L. Rev.* 183, 227-234, 274 to 282 (1971).

judgment. So far as money is concerned, judges in equity have always decided issues of civil liability, no matter how large the claim, without the aid of a jury. Indeed, with respect to violations of orders of a court of equity, such as the one here involved, it is clear the Constitution does not entitle a defendant to a jury when the litigant injured by the violation seeks dollar recompense. Thus we are asked to say that a judge who can decide the issue of breach when a litigant seeks relief for the violation is not a suitable finder of the facts if the imposition of the dollar liability has a *punitive aim. Cf. United States v. United Mine Workers of America, supra* at 300, in which this Court concluded that the federal Constitution did not preclude a single trial combining civil and criminal contempt.

The final inquiry is whether corporations are sufficiently dissimilar to individuals to warrant different punishment upon conviction for contempt in a summary proceeding.

A corporation cannot be sent to jail. This Court has recognized this fact, albeit in another context. See *Melrose Distillers Inc., et al. v. United States*, 359 *U.S.* 271, 274 (1959). This premise then is the basis upon which the respondent asserts that there is a substantial difference between an individual and a corporation, and justifies a difference in the maximum dollar amount of fine permissible for an individual (*In re Beuhrer, supra*) and a corporation (*In re Jersey City Education Assoc., supra*). As the Superior Court of New Jersey, Appellate Division observed in the *Jersy City* case:

> "Unlike union officers, the union itself cannot be jailed for contempt. On the other hand, the citation of all striking members individually and the invocation of plenary proceedings as to each present an impracticable alternative method of vindicating the public wrong committed by the willfull defiance of the order.[2] We observe also that the sting of a

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The State would assert at this juncture that it would be an unfair hardship in most instances to cite each individual member and have them subject to a prison term as well as a fine when in all probability the penalty assessed would be less when divided amongst its membership that would be the penalty assessed against the individual contemnor.

$500 or $1000 maximum fine even on a daily basis, would not, in all probability, serve as a deterent to a large union calling a strike of public employees.

We are of the opinion that corporations are sufficiently dissimilar to individuals to warrant the imposition of a fine exceeding $1000 in a summary contempt proceeding. A greater fine does not transform the contempt from a petty to a serious offense and would not require the incidence of indictment and trial by jury. Consequently, a fine, limited only by reasonableness, may be imposed against a corporate defendant in a summary contempt proceeding." (115 *N.J. Super.* 57-58).

That is not to say that a corporate defendant is not afforded every right attributable to the due process clause:

"To that end, our rules embody sundry restraints. The judge whose order was allegedly breached may not hear the charge unless the defendant consents; the contempt process may be instituted only by the court, lest the litigant turn it to private gain; the defendant shall be informed plainly that the proceeding is penal as distinguished from one for the further relief of the litigant; the penal charge may not be tried with the litigant's application for further relief unless the defendant consents; a conviction is reviewable upon appeal both upon the law and the facts and the appellate court shall give such judgment as it shall deem just. The presumption of innocence of course obtains, and the burden of the prosecution is to prove guilt beyond a reasonable doubt. Thus, the defendant is afforded all the rights of one charged with crime except the right to indictment and to trial by jury." See *In re Beuhrer, supra* at 515-516.

It is submitted that there is no constitutional compulsion to treat a corporation identically to an individual in the same situation. See for example, *Standard Oil Company v. Tennessee,*

217 *U.S.* 413 (1909), where Justice Holmes disagreed with a corporation's argument that it was denied equal protection and due process because prosecution was initiated by bill in equity as opposed to the incidence of grand jury and indictment as would have been the procedure afforded a natural person. It should also be noted that in that case the penalty provisions for the same acts were different; the consequence for a violation of a corporation was ouster, whereas an individual was subject to normal penalties.

The *Polk* decision, *supra*, supports the conclusion that constitutionally different treatment might be afforded a corporation as opposed to an individual in the punishment of criminal contempt. There the court held only that in the absence of congressional promulgation of different sanctions for a corporation, the general sanctions, legislatively adopted, must be deemed applicable. Far from foreclosing the possibility of such legislative action, the court noted that the present penalty provisions of the general section were of little consequence to a large corporation and therefore served little deterrence in protecting the court's orders.

Although the common law restrictions on indicting corporations for criminal acts no longer exist,[3] certain distinctions between individuals and corporations remain intact. For example, in *Campbell Painting Corporation v. Reid*, 392 *U.S.* 286 (1968), this Court held that the Fifth Amendment privilege against self-incrimination applies only to natural individuals. *Id.* at 288. The State submits that other constitutional differences exist, one being that in terms of punishment available, it is valid to consider that a corporation cannot be jailed.

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[3] At common law corporations as they are known today did not exist. More importantly, those corporations which did not exist could not be prosecuted for the common law crimes:

> "... (g) a corporation cannot commit treason, or felony, or other crime, in its corporate capacity; (h) though its members may, in their individual capacities. (i) neither is it capable of suffering a traitor's or felon's punishment, for it is not liable to corporal penalties, nor to attainder, forfeiture, or corruption of blood," 1 *Blackstone's Commentaries*, Chapter 18, "On Corporations," at p. 476.

CONCLUSION

For the foregoing reasons, it is respectfully requested that the Petition for Certiorari in this case be denied.

Respectfully submitted,

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